



U.S. Department of Justice

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April 24, 2023

VIA ECF

Honorable Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Erick Diaz Cruz v. United States of America and Henry V. Santana*
No. 20-CV-891 (EK) (SJB)

Dear Judge Bulsara:

This Office represents Defendant United States of America (the “government or the “United States”) in the above-referenced action. The United States writes to provide an update to the Court about the status of an investigation related to the alleged facts in this case. The government respectfully requests, for the reasons set forth below, that the stay be continued for at least an additional 30 days until May 24, 2023. Plaintiff consents to the government’s request to continue the stay.

By way of background, Plaintiff Erick Diaz Cruz commenced this action on February 20, 2020, against Immigration and Customs Enforcement (“ICE”) Officer Henry V. Santana (“Defendant Santana”), asserting claims pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff alleges that Defendant Santana is individually liable for constitutional violations stemming from a February 6, 2020 incident in which Defendant Santana allegedly shot Plaintiff. *See* Dkt. No. 1. On April 20, 2021, Plaintiff filed an Amended Complaint that, *inter alia*, added claims pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680 against the United States arising from the same alleged shooting. *See* Dkt. No. 29 (“Amended Complaint”).¹

On August 24, 2021, the United States sought a stay of its response both to the Amended Complaint and to discovery requests from the other parties. *See* Dkt. No. 42. The United States requested the stay because the Department of Homeland Security’s Office of the Inspector General (“DHS OIG”) was working with the Criminal Division of the U.S. Attorney’s Office, Eastern District of New York (“Criminal Division”), investigating the alleged shooting

¹ On March 20, 2023, following briefing by Defendant Santana and Plaintiff, this Court dismissed the *Bivens* claims against Defendant Santana, leaving the United States as the sole defendant in this action. *See* Dkt. No. 67 (Court’s Memorandum & Order).

underlying this civil action. On September 20, 2021, this Court stayed discovery in this case. *See* Court's September 20, 2021 Order.

This Court has periodically directed the government to file a status letter concerning the criminal investigation underlying this action and has continued the stay of discovery following each update. *See* the Court's Orders dated January 12, March 15, May 15, July 13, September 16, and November 29, 2022, and January 23, 2023.

By letter on March 24, 2023, the government informed the Court that both the EDNY Criminal Division and DHS OIG had concluded their investigations into the alleged shooting underlying this case in March. *See* Dkt. No. 68 (government's update to the Court and request to continue the stay). In the same letter, the government stated that although DHS OIG had concluded its investigation, it had not yet completed its findings. *Id.* The DHS OIG findings – of which this Office has not yet been made aware – will inform the United States' litigation position in this case. We believed that the findings would have been concluded within the past 30 days, but DHS OIG is still working to complete that process. Accordingly, the United States respectfully requests that the stay be continued for 30 days until at least May 24, 2023.

The government respectfully further proposes that, should the Court grant the stay request, the government will provide an update in advance of the expiration of the stay to let the Court know whether DHS OIG has finalized its findings.

The government thanks the Court for considering this request.

Respectfully submitted,

BREON PEACE
UNITED STATES ATTORNEY

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cc: All attorneys of record via ECF